

## REMARKS

Claims 1-35 are pending in this application. In the Office Action, claims 1-5, 7-11, 13-16, 18-19, and 30-31 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 1,690,516 (Wickers) in view of U.S. Patent No. 6,283,342 (Wilkerson); claims 6, 12, and 17 are objected to as being dependent upon a rejected base claim; and claims 20-30 and 32-34 are allowed.

Initially, Applicant thanks the Examiner for considering the arguments presented in response to the previous rejection, and agreeing with their conclusions. Further, Applicant thanks the Examiner for noticing the allowable subject matter in claims 6, 12, 17, 20-30, and 32-34. By this amendment, Applicant has added a new claim 35. Reconsideration in view of the following remarks is respectfully requested.

With regard to claim 30, Applicant notes that the Office indicates that claim 30 was both allowed and rejected under 35 U.S.C. § 103(a). Since claim 30 depends on an allowed claim 26 and the Office does not present any arguments with respect to claim 30, Applicant respectfully submits that the indication that claim 30 was rejected is in error. As a result, Applicant respectfully requests withdrawal of this rejection.

With regard to claim 1, Applicant respectfully submits that neither Wickers nor Wilkerson discloses or suggests, *inter alia*, a fore handle that is flexible to move around a heel. In support of the rejection, the Office states that “[t]he handle of Wickers is not specifically taught as being flexible... Wilkerson teaches an elongated handle... which could be constructed... so as to have the necessary strength and desired degree of flexibility.” The Office alleges that

incorporating the Office's interpretation of the Wilkerson handle as allegedly disclosing a fore handle that is flexible to move around a heel into Wickers would "make the device easier to use."

Applicant respectfully submits that the Office improperly interprets Wilkerson and Wickers using the hindsight of Applicant's claimed invention. In particular, the Office provides "no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of [the claimed] invention to make the combination in the manner claimed." *In re Kotzab*, 217 F.3d 1365, 55 U.S.P.Q.2d 1313 (Fed. Cir. 2000). Rather, the Office broadly interprets a statement in Wilkerson that the handle can be made of any "substance providing the necessary strength and desired degree of flexibility" (col. 3, lines 6-7) as allegedly disclosing "a fore handle that is flexible to move around a heel."

In particular, both Wilkerson and Wickers are devices that are used for donning and/or removing a shoe. To this extent, the handles of both Wilkerson and Wickers are used to apply a downward force on the opposite end of the device in order to insert it into the shoe and/or assist in removing the shoe. However, incorporating the claimed flexible fore handle would lessen the amount of downward force that can be applied on the opposite end when gripping the handle. In fact, such a flexible fore handle would result in a handle that cannot apply sufficient force to assist in removing the shoe (i.e., operate as a shoe jack as described in Wickers).

Since the material suggested in Wilkerson must "have the necessary strength *and* desired degree of flexibility" (emphasis added), Wilkerson cannot disclose or suggest the claimed fore handle. In particular, the claimed fore handle would lack the required strength to be used as Wilkerson discloses. This is evidenced by the statement in Wilkerson that wood could be used to construct the handle. Clearly, a wooden fore handle would not include sufficient flexibility to

move around a heel. As a result, the Office's interpretation of Wilkerson and modification of Wickers would render Wickers unusable for at least one of its intended uses, i.e., keeping a shoe in place with one end by applying downward pressure from the opposing end. Further, the text of Wilkerson clearly does not support the Office's broad interpretation of the amount of flexibility that is included in Wilkerson's handle. In light of this, Applicant respectfully requests withdrawal of the rejection of claim 1.

Applicant respectfully submits that each of the rejected dependent claims is patentable for the above-stated reasons as well as their own unique features. For example, claim 4 states that the carrier plate extends beyond the fore handle by at most approximately 2.5 inches. The Office alleges that Applicant has not provided any evidence of criticality of the claimed range. To the contrary, in discussing one embodiment of the invention on page 7 of the application, Applicant states that the carrier plate should be relatively short compared to its width in order to "allow[] for a minimal amount of surface resistance during use to smoothly bring [the] carrier plate under the foot, around the heel and up the leg." Applicant goes on to state that in order to accommodate a relatively large foot, the carrier plate would extend beyond the fore handle by approximately 2.5 inches. In sharp contrast, both Wickers and Wilkerson, to the extent that they can be interpreted as suggesting an analogous element, suggest a carrier plate that is significantly longer than it is wide. As a result, Applicant respectfully requests withdrawal of the rejection of claim 4.

With further regard to claim 10, the Office similarly alleges that Applicant has presented no evidence of the criticality of each joint having a length that is less than approximately 0.75 inches. To the contrary, in discussing one embodiment of the invention on page 8 of the

application, Applicant discusses that relatively short joints allow the carrier plate to maintain a greater amount of longitudinal flexibility. In particular, the presence of the joints prevents the carrier plate from flexing longitudinally where the joints are located. As a result, the claimed length assists in the carrier plate maintaining longitudinal flexibility along most of its length. In sharp contrast, Wickers and Wilkerson, to the extent that they can be interpreted as suggesting an analogous element, suggest joints that are substantially longer than Applicant's claimed range. As a result, Applicant respectfully requests withdrawal of the rejection of claim 10.

With further regard to claim 11, the claimed device further comprises a horn coupled to the handle for assisting in removing footwear. While Applicant recognizes that Wickers discloses use of the device in removing a shoe, Applicant respectfully submits that this fails to disclose the claimed invention. In particular, Wickers discloses use of the same portion of the device for both donning and removing the shoe. In sharp contrast, Applicant's claimed invention includes a carriage that holds footwear during donning, and a horn for removing footwear. Consequently, Applicant's claimed invention uses two different elements for donning and removing footwear. As a result, Applicant respectfully requests withdrawal of the rejection of claim 11.

With further regard to claim 15, the Office alleges that Applicant has presented no evidence of the criticality of a fore handle having a length of about 9 inches. In sharp contrast, in discussing one embodiment of the invention on page 7, Applicant discusses that the length of nine inches can accommodate a relatively long foot. In particular, for one embodiment of the invention, the fore handle should be long enough so that the device can be configured as shown in FIG. 11. Neither Wilkerson nor Wickers discloses or suggests such a configuration for their

respective handles. As a result, Applicant respectfully requests withdrawal of the rejection of claim 15.

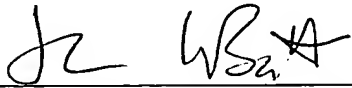
With further regard to claim 31, the Office alleges that Wickers suggests the claimed feature of the carriage being longitudinally flexible. In particular, the Office alleges that “the carriage of Wickets (sic) being made of sheet metal would inherently have some longitudinal flexibility.” Applicant strenuously disagrees with the Office’s conclusion. In Wickers, “the side edges of the body portion are curved upwardly to define a shoe horn.” (lines 41-43). The body portion incorporates this curvature to provide longitudinal rigidity for the shoe horn. Clearly, the body portion would not maintain any longitudinal flexibility. Since the curvature provides a necessary function for Wickers, i.e., longitudinal rigidity, the Office cannot interpret the body portion as having longitudinal flexibility without going against the teachings of Wickers. As a result, Applicant respectfully requests withdrawal of the rejection of claim 31.

With regard to newly added claim 35, Applicant respectfully submits that neither Wickers nor Wilkerson discloses, *inter alia*, a carriage that lifts the footwear during donning. In particular, both Wickers and Wilkerson disclose devices that assist in placing a user’s foot into a shoe. To this extent, both devices are inserted into the shoe in order to maintain a desired opening. However, neither device is configured to lift the shoe. In sharp contrast, the claimed carriage can be configured to lift the footwear being donned. This feature of the claimed invention is clearly disclosed in FIGS. 11-14 showing an illustrative use of the claimed invention.

In light of the above, Applicant respectfully submits that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better

condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the number listed below.

Respectfully submitted,

Handwritten signature of John W. LaBatt, consisting of stylized initials 'JL' followed by 'W. LaBatt'.

Dated: December 8, 2003

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